

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

Docket No. 76-1250

**IN THE
United States Court of Appeals
For the Second Circuit**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

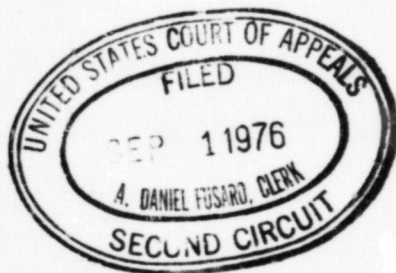
— vs —

JOSEPH C. VISPI,

Defendant-Appellant.

On Appeal From the Judgment of the United States District
Court for the Western District of New York

SUPPLEMENTAL APPENDIX



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**PLAN FOR PROMPT DISPOSITION OF CRIMINAL
CASE.**

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4	5	6	7	8	9	10	August
11	12	13	14				

* Circled dates are excluded periods per Rule 5, 2nd
Circuit (and Western District)

LETTER, dated 11-15-71 from Jules Ritholz to Jay G.
Philpott, Jr., Esq.

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November 15, 1971

Jay G. Philpott, Jr., Esq.
Department of Justice
9th and Pennsylvania Ave., N.W.
Washington, D. C.

Re: Joseph Vispi
Buffalo, New York

Dear Mr. Philpott:

This letter memorandum is submitted to highlight some of the issues raised with you in the course of the hearing before you on October 26, 1971.

You provided taxpayer's representative with figures for gross income, taxable income and tax. In the latter connection, it was pointed out to you that the amended returns prepared and filed by the taxpayer contained a serious error against his interest. While the form itself would appear to be comparatively simple to complete, the taxpayer computed the amended tax not on the basis of amended taxable income but on the basis of adjusted gross income, thereby failing to reduce that latter figure by the deductions and exemptions provided to him by law and already correctly set out on his original return.

It is necessary to point out another error which, if the taxpayer's plight were not so serious, would provide a humorous aspect to his incompetence. Subsequent examination of his records discloses that the items of income innocently overlooked in the original returns and reported in the amended returns were reversed and the additional item of income reported in the amended return for 1967 belongs in the amended return for 1968 and vice versa. It is submitted that the foregoing, together with ample other indications, described to you demonstrate his complete lack of tax consciousness and

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LETTER, dated 11-15-71 from Jules Ritholz to Jay G.
Philpott, Jr., Esq.

Jay G. Philpott, Jr., Esq.

November 15, 1971

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the total absence of any intent to avoid the payment of any taxes due to the United States.

It goes without saying that there were also errors in the original return filed by the taxpayer and we point to everyone's agreement that they were completely and demonstratively innocent oversights.

No analysis of the facts surrounding the alleged delinquency can reach the conclusion that the 1967 delinquency was wilful in the light of the timely filing of a request for extension of time to file for that year and the prompt reply by the Internal Revenue Service granting that extension. It challenges credulity to claim that a taxpayer who had settled on a wilful course of failure to file would write a request for an extension before the due date thus calling to the attention of the Service, his existence as a taxpayer and his inability to file on time. The point need hardly be labored.

It is the contention of the taxpayer that a similar request for an extension was also filed with respect to the year 1968 and this contention is supported by the recollection of the Certified Public Accountant whom he engaged for the purpose of preparing the return and whose best recollection it is, that he, the accountant, in fact wrote requesting the extension. In any event it must be pointed out that the 1968 return was not a seriously delinquent one, having been filed within eight months of the due date. Such delinquency is de minimis and it is believed that research will fail to disclose a single case of successful prosecution for the filing of a delinquent return where it was filed so reasonably close to the due date. The filing of a return within eight months of the due date tends to show there was no wilful failure to file but on the contrary an intention to file all along.

The fact that the taxpayer was well along the way of preparing both these returns in August 1969 also demonstrates the intention to file. In that month a Revenue Agent called on the taxpayer to examine the years 1965 and 1966. No question had been raised about any later return. Nevertheless, the

*LETTER, dated 11-15-71 from Jules Ritholz to Jay G.
Philpott, Jr., Esq.*

Jay G. Philpott, Jr., Esq.

November 15, 1971

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taxpayer voluntarily disclosed to the Revenue Agent that he had requested extensions for the two subsequent years and was working on them. The Revenue Agent urged him to complete them promptly for filing with him. The taxpayer worked on them intermittently through the Fall of 1969 during the Revenue Agent's examination of the earlier two years but was interrupted by bouts of illness caused by his seriously aggravated prostate condition.

Apparently piqued by the delays, (possibly attributable as much to the taxpayer's mental condition as his physical illness) the Revenue Agent apparently referred the matter of delinquent filing of those returns to the Intelligence Division and in the month of January 1970, the month in which the Special Agent first appeared before the taxpayer, he was promptly handed the completed returns, prepared over the previous months. Although an exhaustive verification procedure followed, the lengthy investigation apparently added nothing to the matter since it is agreed that any errors in the returns were innocent. The facts for review and decision by you are those which crystallized during the very first month of the Special Agent's appearance in the case.

It should be clear from the psychiatric report of Dr. Emanuel Amato, heretofore submitted, that we are dealing with an obvious case of mental illness easily diagnosed. Fortunately, there is available a report by this specialist who has had the opportunity to observe the taxpayer over a period of seven or eight years, and as a treating physician for over four months. The doctor describes a patient of extremely limited capacity, inadequate to most of the demands of life. Beset by physical ailments during most of his life, his personal limitations and inadequacy, have kept him to the most rudimentary levels of professional work.

For the greater part of his life he has been engaged in employment in the fringe areas of his chosen profession and during the more recent years when he has conducted a small private practice, it has been limited to areas more clerical

LETTER, dated 11-15-71 from Jules Ritholz to Jay G.
Philpott, Jr., Esq.

Jay G. Philpott, Jr., Esq.

November 15, 1971

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than legal such as title examination and estate administration. He has had to supplement his earnings by a political job involving basically, secretarial duties, and the family earnings are supplemented by the earnings of his wife as a sales clerk. Physically, his ailments run the gamut from prostate malfunction to pilonidal cyst, gastric ulcers, appendectomy, kidney stones, tonsillectomy, etc., but this taxpayer's real problem arises from his constitutional inability by virtue of mental illness to function in a normal way by completing tasks, within reasonable time limits and with reasonable competence. His mental illness has on at least one occasion required him to pay money to a client for losses suffered when, by reason of his inability to function, he allowed a Statute of Limitations to run.

His difficulty in meeting the demands of life have been sorely aggravated by the burden imposed in the form of responsibility for a son, now 22 years old, who is brain damaged and can have only the most limited expectations because of an inability to write and only the most rudimentary ability to read and converse.

To him the years 1967 and 1968, the years of late filing, were catastrophic ones. After, what must have been to him, superhuman effort in establishing a law practice, albeit routine and rudimentary, in a suite of offices owned by classmates, he was forced to move out under the most crushing circumstances when, having failed to "take the hint", workmen were literally sent in to tear the existing arrangement out and do a remodelling for a newcomer while he was still present. The departure under those conditions understandably resulted in massive emotional disruption, as well as the loss and disorganization of records.

Having found space in another building with a law firm where he could rent a room, he was no sooner moved in when the principal tenant there began efforts to break his lease and the taxpayer was directed by the landlord of the building to move again. The effect of these disruptions on a person with his fragile emotional makeup was crushing and his ability to file tax returns timely, as well as to function in most every other aspect of his life, collapsed under circumstances he could not withstand. The doctor's description

LETTER, dated 11-15-71 from Jules Ritholz to Jay G.
Philpott, Jr., Esq.

Jay G. Philpott, Jr., Esq.

November 15, 1971

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of his life patterns appear in greater detail in the medical certificate and make quite clear the effect of these external disruptions on his inner ability to function.

It is enlightening that the taxpayer probably functions quite well in his part-time job where he need only discharge the routine functions of a social, correspondence and appointment secretary, answer mail, do some proof-reading and act as a comparison clerk. Such functions are far more suited to his mental and emotional makeup than more demanding tasks.

There is no question that the taxpayer is an honest, forthright and indeed, socially motivated citizen. He gives forthrightly and freely of his efforts to a surprisingly large array of charitable endeavors when others could better afford to do so. A list is available if desired. There is no question that traits of dishonesty, evasion or wilful shirking of responsibility are completely alien to his makeup.

Throughout the entire conduct of the investigation, he was entirely unrepresented, nor did it occur to him to seek representation even in the preparation of the returns in question. He provided cooperation of the fullest extent to the Agents, giving them, not only his financial records but also his legal files for whatever purpose they might serve. When questioned on the latter point, it was apparent that it had never occurred to him that a client's privilege might have militated against the disclosure of those files. Indeed, on the first contact with the Special Agent he was invited to proceed forthwith to his safe deposit box, without warning, to permit an examination of its contents from ambush. As might be expected, he proceeded to permit such examination forthwith and the box was found to be as empty of things of value as he is of guile.

In conclusion it is urged that this is a case of technical delinquency only. In one of the years an extension was timely requested and granted, in the other it was at least requested and the return filed a mere eight months late. The complete course of the examination was characterized by full

LETTER, dated 11-15-71 from Jules Ritholz to Jay G.
Philpott, Jr., Esq.

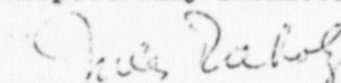
Jay G. Philpott, Jr., Esq.

November 15, 1971

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cooperation and absence of guile. Even the amended returns filed voluntarily had errors against the taxpayer's interest. The cause of the relatively brief delinquency is manifestly the taxpayer's illness, compounded by two catastrophic years of disruption. He is the support of his 77 year old mother and his brain damaged son, two compassionate reasons arguing for understanding of his plight. The delinquency is remarkably isolated in that he has managed substantially to comply with his tax obligations in the years prior to and after those in question. The entire tax liability claimed to be due has been paid in full. On the basis of all the foregoing facts, and the complete and utter absence of a single indicia of wilfulness, it would seem that administrative judgment, legal analysis, investigation and not least of all, compassion, argue for the return of this case to the Internal Revenue Service for civil disposition.

Respectfully submitted,


Jules Ritholz

JR/cm

LETTER, dated 4-17-72 from Philip H. Magner, Jr. to
Hon. C. Donald O'Connor.

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VINCENT M. GAUGHAN, COUNSEL

April 17, 1972

Honorable C. Donald O'Connor, Esq.
Acting United States Attorney
United States Court House
Buffalo, New York

Re: Joseph C. Vispi

Dear Sir:

I am writing you at the suggestion of Richard Moot, attorney for Joseph C. Vispi, Esq., who was formerly associated with this office in the general practice of law from 1962 to 1968 at our offices in the Statler Hilton Hotel under the name of Garvey, Magner, Vispi & Sullivan. At Mr. Moot's request and with Mr. Vispi's consent I wish to set forth the complete facts and circumstances relating to Mr. Vispi's association with this firm which may bear upon your evaluation or the Grand Jury's consideration of whether Mr. Vispi willfully intended to violate the law in failing to file income tax returns for himself and his wife until after the time permitted by law had expired.

My partner James A. Garvey and I have known Mr. Vispi since 1946 in our Freshman year at the then University of Buffalo Law School, and we continued as classmates until graduation in the class of 1949, of which class Mr. Vispi was the President. The firm of Gaughan, Magner & Garvey was formed in 1955 and succeeded in 1957 by the firm of Montesano, Garvey & Magner. Mr. Vispi did occasional work, principally in the real estate field, as counsel to both of those firms, and maintained an office for a period of time closely contiguous to our then offices in the Genesee Building. Michael T. Sullivan, Jr. began his employment in about 1956 and is, of course, a partner in our present firm.

When the firm of Garvey, Magner, Vispi & Sullivan was formed in the Statler Hilton Hotel in 1962 Mr. Vispi was included in the firm name as a nominal partner.

*LETTER, dated 4-17-72 from Philip H. Magner, Jr. to
Hon. C. Donald O'Connor.*

Honorable C. Donald O'Connor, Esq.

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April 17, 1972

In actuality he subleased from Mr. Garvey and me and was independent of us financially. We handled a number of matters for him, principally in the trial field, and he worked on many matters for us, principally in the real estate field, including almost all matters associated with Maccabees Insurance Company whom we represented as Buffalo counsel.

At the time we invited Mr. Vispi to join us as a nominal partner in 1962, we felt sure that our association would be mutually beneficial since we had then and continue to have the very highest estimate of Mr. Vispi's character and personal qualities and since we knew him to be a hardworking lawyer, very dedicated to the interests of his clients and of his profession. His reputation in the legal community was universally excellent, and he had served the Bar Association as a Director and in many other capacities, as well as interesting himself in many community activities. Though I now serve the Bar Association as its President, Joe Vispi's dedication to and prominence in that Association antedates mine by many years.

Having in mind these qualities and knowing Joe Vispi to be most devoted to his wife Terry and two children, Jim Garvey and I were very optimistic about our association with Mr. Vispi.

Unfortunately, during the years of our association with Mr. Vispi in the firm in which he was a nominal partner, factors came to our attention which caused us very considerable concern. Clients of ours in the real estate field who were referred to Mr. Vispi's handling made repeated complaints to us that their legal business was either not being completed at all or completed at much too tardy a date. The Maccabees Insurance Company in particular repeatedly complained to us that their work was not proceeding in a satisfactory pace, that promises made as to the time of completion were not kept, that it was difficult to get Mr. Vispi to respond to correspondence or phone calls, and that they were generally dissatisfied.

Indeed it was not that Mr. Vispi was not working, for he worked very diligently and through long hours, spending many evening hours at the office or at the County

*LETTER, dated 4-17-72 from Philip H. Magner, Jr. to
Hon. C. Donald O'Connor.*

Honorable C. Donald O'Connor, Esq.

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April 17, 1972

Hall. His work methods, however, were extremely inefficient and consumed with detail. We tried repeatedly to persuade him of the inefficiency of writing out in meticulous longhand lengthy title examinations and reports, and attempted to persuade him to use dictating equipment or more secretarial assistance. Unfortunately, our efforts to change his work habits were unsuccessful.

Well liked and widely known in the community he was constantly asked for favors, and apparently could not say no. No request for assistance was too small to require his personal attention with the result that his time soon became spread so thin that he was physically unable to keep up with his office work. Instead of concentrating his efforts in a workmanlike way to complete the important matters brought to him by his clients, he attempted to help everyone on any problem, no matter how small and frequently without fee, with the result that he ended up satisfying only a relatively few people and incurring complaints and dissatisfaction of a large number, both referring attorneys and individual clients.

His work habits imposed on him a considerable physical, mental and emotional strain, and it was in these years that he began to complain repeatedly of headaches, fatigue and exhaustion. These complaints were significant to us because Mr. Vispi's disposition as we had known it previously had been warm, cheerful and optimistic. I do not mean to infer that his attitude was in any way surly, but it was evident to us since we knew him so well that he was working under heavy strain and not feeling well at all.

During 1967 Jim Garvey, Mike Sullivan and I were engaged in discussions with another firm looking toward possible merger. It became evident to us that Mr. Vispi should not be included in that merger because his personal work habits were such that they reflected considerably in an adverse fashion upon our firm.

The decision to exclude Mr. Vispi from the new firm which was formed January 1st, 1968 under the firm name of Pritchard, Garvey, Magner, Kinney, Sullivan & Buch was made by Jim Garvey, Mike Sullivan and me with the greatest reluctance and regret because of our personal regard and affection for Joe Vispi and his family. We felt that however distasteful it might be, our course of conduct had to be such as to best protect the interests of our clients and the good name of our firm.

*LETTER, dated 4-17-72 from Philip H. Magner, Jr. to
Hon. C. Donald O'Connor.*

Honorable C. Donald O'Connor, Esq.

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April 17, 1972

Though many months ensued between the time we informed Mr. Vispi of our decision and the time the new firm was formed, rather characteristically he was not ready to move until a very few days before the new partners moved in.

We knew at the time that Joe was deeply hurt by this action on our part, and perhaps we should have sought and found a way to treat him more kindly. The necessities of professional life, however, with all of its attended pressures are such that hard decisions sometimes must be made even at the sacrifice of personal feelings. I am sure the necessity of leaving our office had a tendency to aggravate considerably Joe's professional problems, especially since the association he then formed also worked out unsatisfactorily as I am given to understand.

When Mr. Moot informed me of Joe's tax difficulties arising from failure to file his 1967 and 1968 tax returns on time, I was not greatly surprised in the sense that lack of punctuality was so characteristic of his work at that time, nor does it surprise me that he delayed attention to his personal business in order to devote his time, however inefficiently, to his clients business. He suffered in very aggravated form from an excess of generosity with his time and efforts on behalf of friends and clients often at the sacrifice of his own personal affairs.

Such generous inefficiency is, in my judgment, totally inconsistent with any evil or wrongful intent on Joe's part with respect to filing his own returns on time. On the contrary, it is abundantly clear to me and has been for years that Joe is incapable of taking advantage of any person or harboring any willful or unlawful intent. He has always been scrupulously honest and as meticulous and careful with respect to paying his obligations as he was careless and neglectful about his own affairs.

In fairness, I should add, as is readily apparent from this letter, that I am still a close friend of Mr. Vispi's and deeply concerned for his future. I have tried to make this report factual and objective because there is no question in my mind that whatever difficulties Mr. Vispi has encountered with respect to his income tax returns arose from the facts, circumstances and difficulties I have attempted to describe in this letter and not any wrongful or unlawful intent upon his part.

*LETTER, dated 4-17-72 from Philip H. Wagner, Jr. to
Hon. C. Donald O'Connor.*

Honorable C. Donald O'Connor, Esq.

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April 17, 1972

Thank you for the opportunity of submitting these additional facts and circumstances with respect to Mr. Vispi. I hope this information will prove helpful in considering the total circumstances relating to Mr. Vispi's failure to file the income tax returns for himself and his wife within the time required by law.

Respectfully yours,


PHILIP H. MAGNER, JR.

PHM/s

LETTER, dated 4-18-72 from Richard E. Moot to
Hon. C. Donald O'Connor.

LAW OFFICES

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April 18, 1972

Honorable C. Donald O'Connor, Esq.
Acting United States Attorney
United States Court House
Buffalo, New York 14202

Attention of Richard J. Arcara, Esq.

Re: Joseph C. Vispi

Dear Sir:

I have been retained by Mr. Joseph Vispi in defense of any criminal charges which may be brought against him by reason of the fact he did not file the income tax returns for himself and his wife until after the date of the requested extensions which had been made on his behalf. Mr. Vispi's former attorney, Mr. Jules Ritholz, of New York City, has advised me that Mr. Vispi's file has been forwarded to you by the Department of Justice for prosecution. I have now received and had an opportunity to review the contents of Mr. Ritholz's file.

The file, as forwarded to me, does not, in my judgment, set forth the very great difficulty which will face the government in trying to obtain a conviction in the event an information or an indictment is filed against Mr. Vispi. The purpose of this letter is to set forth, factually, the local situation and Mr. Vispi's position. It may be that these facts were unknown to Mr. Ritholz, a New York City practitioner, and did not receive the consideration of the Department of Justice when the matter was reviewed by Mr. Philpott in the conference of October 26, 1971.

Mr. Vispi is a former director of the Erie County Bar Association and one of the best known and respected attorneys to hold that position. Years before, he had been elected president of his graduating class at the local University of Buffalo Law School. For eight years, including the years in question, he served as confidential clerk to a New York Supreme Court justice where he was privy to the decisions of the sitting judge on pending cases prior to the announcement of decisions to the litigants. The position, like clerk to a United States Supreme Court justice,

*LETTER, dated 4-18-72 from Richard E. Moot to
Hon. C. Donald O'Connor.*

Honorable C. Donald O'Connor, Esq.

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was one of confidence requiring absolute integrity and honesty.

Character witnesses available to testify to Mr. Vispi's reputation for truthfulness, integrity and honesty in the community will include:

Two or more New York Supreme Court justices including a classmate who serves as Chief Administrative Judge of Criminal matters for Erie County.

The chief confidential law assistant to all the New York Supreme Court justices of the Eighth Judicial District who worked closely with Mr. Vispi for eight years and who formerly served as Senior Assistant United States Attorney.

The chief clerk and prior deputy clerk of the United States District Court where Mr. Vispi's case will be tried.

Two or more revenue agents in the local District Director's Office including an agent in charge of an important division.

The usual civic and community leaders including the present President and one or more prior Presidents of the Erie County Bar Association, and the Jesuit Father serving as Vice President of Business Administration for Canisius College, the leading private college in our community.

From my own experience as First Assistant United States Attorney in cases of this type, I know it is not helpful, at this stage, to review the equities or merits of a case but the above practical considerations on the enormous difficulty facing the government in obtaining a conviction may not have been considered before. Furthermore, the taxpayer's personal accountant, who worked upon Mr. Vispi's prior years, has been recently appointed Professor of Accounting at Canisius College. He will testify that for both of the years, 1967 and 1968, he requested an extension of time to file the returns, on behalf of Mr. Vispi. He will also attest to the fact that the request was made with the intention of filing the returns and that at no time did Mr. Vispi intend to violate the law by willfully or intentionally failing to file the required returns within such requested additional time. Such testimony from the taxpayer's accountant, now a Professor of Accounting at our well-known and highly regarded Jesuit College, may, by itself without more, prevent a conviction. Why should the witness in such a position falsify his testimony on such a simple matter?

By contrast, the usual query of, "Why would any practicing attorney fail to file his own personal income tax returns on

*LETTER, dated 4-18-72 from Richard E. Moot to
Hon. C. Donald O'Connor.*

Honorable C. Donald O'Connor, Esq.

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time?" is simply and logically answered by the attached letter of the President of the Erie County Bar Association who was Mr. Vispi's senior in the private practice of the law at the time - "It is the busy cobbler's children who are without shoes." Mr. Vispi simply put the myriad details and demands of his clients' unfinished business ahead of his own personal affairs. Such a choice cannot support a criminal intent or conviction.

The important question raised here, however, goes beyond whether the government can obtain a conviction. But why, the public will want to know, does the government seek a conviction against such a highly respected and honest citizen? Is the interest of justice served by the prosecution of so small a matter when so many major criminal matters in our community, including the Appalachia underworld, require the attention of the Department of Justice and our local Federal Court?

The important public policy and interest of justice question in this case reaches well beyond the merits or demerits of this file for one misdemeanor. It touches the respect and regard for the Federal Judicial system, the Department of Justice and the Internal Revenue Service in the minds of citizens of our community. When so many respected citizens, judges, government officials, including former Federal prosecutors, and churchmen are arrayed against the government in its effort to obtain a conviction on this relatively minor and highly questionable misdemeanor, the ultimate losers, regardless of the outcome, will be the Department of Justice, the Internal Revenue Service, and the Government of which they are such an important part.

Pending the consideration of this letter, I wish to renew the prior request for a conference with you on behalf of my client and respectfully suggest that, prior to such conference, the material in this letter and attachment be reviewed by the Department of Justice in Washington. I am confident from my conversations with Mr. Ritholz, the former attorney, that as a New York City practitioner, he was unaware of the local situation and most of the facts contained in this letter. Thank you for your consideration of this request. I will await your advice on a suitable time for our conference.

Respectfully yours,



Richard E. Moot
for

OHLIN, DAMON, MOREY, SAWYER & MOOT

REM:md
Att.

LETTER, dated 3-26-74 from David G. Larimer, Ass't. U.S.
Attorney to Richard E. Moot.

March 26, 1974

Richard E. Moot, Esq.
Ohlin, Damon, Morey, Sawyer
& Moot
1800 Liberty Bank Building
Buffalo, New York 14202

Re: United States v. Joseph C. Vispi, Cr. 1974-44

Dear Mr. Moot:

This case has been transferred from Buffalo to the Honorable Harold P. Burke in Rochester, New York. Therefore, the case has been assigned to me for prosecution. Although the information was filed in this case, it appears that Mr. Vispi was never arraigned on these charges.

Therefore, we have scheduled arraignment in this case on April 8, 1974, at 10:00 a.m. in the U. S. Courthouse, Rochester, New York.

If you have any questions concerning this matter, do not hesitate to call me in Rochester at 263-6762.

Sincerely,

JOHN T. ELFVIN
United States Attorney

By: DAVID G. LARIMER
Assistant United States Attorney

Enclosure

DL:vf

LETTER, dated 4-2-74 from Richard E. Moot to
Hon. David G. Larimer.

LAW OFFICES

OHLIN, DAMON, MOREY, SAWYER & MOOT

1800 LIBERTY BANK BUILDING

BUFFALO, NEW YORK 14202

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TERRANCE W. CONNORS
BRIAN P. PROSEY
ROBERT B. CHESBRO

TELEPHONE
AREA CODE 716
856-5500

April 2, 1974

Honorable David G. Larimer
Assistant United States Attorney
United States Attorney Office
United States Court House
Rochester, New York 14614



Re: U.S. v. Joseph C. Vispi
Cr. 1974-44

Dear Mr. Larimer:

This will confirm the arraignment of my client, Joseph C. Vispi before Judge Burke at the U. S. District Court in Rochester at 10:00 a.m. April 22, 1974. I am enclosing a copy of my rule 16 and rule 7 discovery motion and the affidavit.

This may be premature in advance of the arraignment, however, it will give you an opportunity to let me know if there is any objection to the information or documents I have requested.

I will withhold filing of the original of the motion and affidavit in the clerk's office until I hear from you. If possible, I would like to file this motion in advance of the arraignment and provided you can let me know by April 8 or 9 any objection you may have, I will be prepared to argue the motion on the disputed items at the time of the arraignment April 22, 1974.

Please let me know if this is not satisfactory. After your courtesy with respect to adjournment, I would be pleased to accept your suggestion on the enclosed motion.

Very truly yours,

Richard E. Moot
for OHLIN, DAMON, MOREY, SAWYER & MOOT

REM;mfm
enclosures

LETTER, dated 5-17-74 from David G. Larimer, Ass't. U.S.
Attorney to Richard E. Moot.

71-0644
DGL:jcw

May 17, 1974

Richard E. Moot, Esq.
Ohlin, Damon, Morey, Sawyer & Moot
1800 Liberty Bank Building
Buffalo, New York 14202

Re: United States v. Joseph C. Vispi. Cr. 1974-44.

Dear Dick,

On May 13, 1974, motions day here in Rochester, I advised Judge Burke that you were willing to waive oral argument on the discovery motions, but that you wished ten days to file a memorandum of law. I indicated that I wished five days from the filing of your papers to respond. The judge indicated that the matter would be submitted as of May 28, 1974.

If you need any additional time to file your memorandum, I have no objection, and I am sure the Court would concur, as long as I have five days to respond.

Sincerely,

DAVID G. LARIMER
Asst. United States Attorney

LETTER, dated 8-8-74 from David G. Larimer, Asst. U.S.
Attorney to Richard E. Moot.

71-0644
DGL:jew

August 8, 1974

Richard E. Moot, Esq.
Ohlin, Damon, Morey, Sawyer & Moot
1800 Liberty Bank Building
Buffalo, New York 14202

Re: United States v. Joseph C. Vispi. Cr. No. 1974-44.

Dear Dick,

With reference to your letter of August 6, 1974, it is my understanding that the discovery matter has already been submitted to Judge Burke as of May 28, 1974. We have not responded to your memorandum of law within the time allowed by the Court and we are therefore relying on our original Response to Defendant's Motion for Discovery and Inspection which was filed on or about May 6, 1974.

I am sorry if there was some misunderstanding.

Sincerely,

JOHN T. ELFVIN
United States Attorney

By: DAVID G. LARIMER
Asst. United States Attorney

LETTER, dated 8-22-74 from Richard E. Moot to
Hon. Harold P. Burke.

LAW OFFICES
OHLIN, DAMON, MOREY, SAWYER & MOOT
1800 LIBERTY BANK BUILDING
BUFFALO, NEW YORK 14202

August 22, 1974

ROY P. OHLIN
1928-1971

NASON O. DAMON
JOSEPH H. MOREY, JR.
WILLIAM S. H. SAWYER
ROBERT J. MCDONN
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TELEPHONE
AREA CODE 716
856-5500

Hon. Harold P. Burke
U.S. Court House
Rochester, New York 14614

Re: United States v. Joseph C. Vispi
Cr. No. 1974-44

Dear Judge Burke:

I enclose copies of the Notice of Readiness and a letter of August 8, 1974, from Mr. Larimer in the above.

Defendant's Discovery Motion of May 13th is still pending before you. Our Memorandum in Support of the Discovery Motions was filed and served May 24th. The Government elected not to file a Reply Memorandum. This, as Mr. Larimer suggests, explains the apparent confusion. Apparently, you were waiting for the Government's Memorandum before passing upon the disputed items of discovery.

In part, the Government has complied with defendant's requested discovery and upon others, it has declined to furnish the information. The requested items and the Government's response are tabulated on page 3 of our Memorandum, a copy of which is enclosed for your convenience.

The only two remaining items in dispute which require your decision are:

1. The names of witnesses requested in Paragraph 5(e);
2. A bill of particulars stating the acts and omissions or failures to act which support the allegations contained in the information, requested in Paragraphs 6(a) (b) (c).

.....

*LETTER, dated 8-22-74 from Richard E. Moot to
Hon. Harold P. Burke.*

Hon. Harold P. Burke

Re: U.S. v. Vispi

page two...


As soon as these matters are resolved and the
calendar of the court permits, the defendant wishes to have
this case set for trial.

Respectfully yours,

Richard E. Moot
for OHLIN, DAMON, MOREY, SAWYER & MOOT

2
enclosures

cc: Mr. John R. Elfvin
Mr. David G. Larimer



22

PLEA.

VISPI, JOSEPH C.

71-0044 Cr.
Cr. 74-44

VIO: T. 26, U.S.C., §7203

FILED: 2-1-74. 2-Count Information

ARRAIGN: 4-22-74

PLEA: Not Guilty

Atty. Richard E. Moot
Ohlin, Damon, Morey, Sawyer & Moot AUSA Larimer
1600 Liberty Bank Building, Buffalo

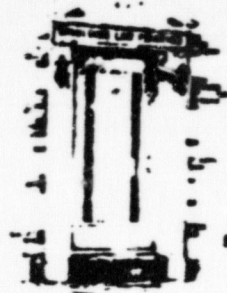
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RUSSELL D. MAY, President

LETTER OF TRANSMITTAL

Date: 20 August 1976

HON. A. DANIEL FUSARO, CLERK
U.S. Court of Appeals, Second Circuit
Room 1702 U. S. Court House
Foley Square
New York, New York 10007

Re: United States of America vs. Joseph C. Vispi

~~Index~~

Dear Sir:

Enclosed please find copies of the above entitled for filing as follows:

101 ~~Records~~ SUPPLEMENTAL APPENDIX

~~XXXX Index~~

~~XXXX Original Record enclosed~~

~~XXXX Original Record to come~~

Very truly yours,

Everett J. Rea

Everett J. Rea

cc: Eugene Welch, Esq.

Affidavit of Service

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Everett J. Rea/General Manager

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20 August 1976

Re: **United States of America vs. Joseph C. Vispi**

State of New York)
County of Onondaga) ss.:
City of Syracuse)

EVERETT J. REA,

Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **RICHARD J. ARCARA, ESQ.**
United States Attorney

Attorney ☒ for the Plaintiff-Appellee

☒ He personally served three (3) copies of the printed ☐ Record ☐ Brief ☒ Supplemental Appendix
of the above entitled case addressed to:

OHLIN, DAMON, MOREY, SAWYER & MOOT

Attorneys at Law

1800 Liberty Bank Building

Buffalo, New York 14202

Att: Richard E. Moot, Esq.

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York, on **20 August 1976.**
☐ By hand delivery

Everett J. Rea
EVERETT J. REA

Sworn to before me this **20th** day of **August 1976.**

Donald E. Gunn
.....
Notary Public
Commissioner of Deeds

cc: Eugene Welch, Esq.